



## HIGH COURT OF AUSTRALIA

3 May 2012

### PETER JAMES SHAFRON v AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

[2012] HCA 18

The High Court today held that Mr Peter James Shafron, the company secretary and general counsel of James Hardie Industries Ltd ("JHIL"), contravened s 180(1) of the *Corporations Act* 2001 (Cth) ("the Act") by failing to discharge his duties as an officer of JHIL with the degree of care and diligence that a reasonable person in his position would have exercised.

The judgment in this matter should be read with the judgment handed down today in *Australian Securities and Investments Commission v Hellicar* [2012] HCA 17. This statement should likewise be read with the statement issued concerning that judgment.

Mr Shafron's appeal concerned a finding at trial, affirmed by the Court of Appeal of the Supreme Court of New South Wales, that he had contravened s 180(1) of the Act in two ways. First, that Mr Shafron had failed to advise either the CEO or the board of JHIL that the company should disclose to the Australian Stock Exchange ("ASX") certain information about a Deed of Covenant and Indemnity governing JHIL's separation from two of its subsidiaries. Second, that Mr Shafron had failed to advise the board of JHIL that an actuarial study he had commissioned to predict asbestos-related liabilities suffered from critical limitations.

Section 180(1) of the Act imposes a duty of reasonable care and diligence on directors and officers in the discharge of their duties. Mr Shafron did not dispute that s 180(1) applied to him in his capacity as company secretary. The issue before the High Court was whether s 180(1) applied to Mr Shafron for conduct he submitted was undertaken in his capacity as general counsel.

Mr Shafron submitted that the application of s 180(1) should be restricted to those functions he performed in his capacity as company secretary. Mr Shafron argued that the contraventions alleged against him concerned his responsibilities as general counsel, not his responsibilities as an "officer" of the company, and thus should not be subject to s 180(1).

The High Court rejected this argument. Mr Shafron's responsibilities with JHIL as company secretary and general counsel were indivisible and must be viewed as a composite whole. The scope of responsibilities of a particular officer is to be determined by an examination of all the tasks in fact performed for that company by that officer. The role of a particular company secretary cannot be deduced from an examination of the kinds of tasks that other company secretaries, whether at that company or in general, might perform. The Court of Appeal was correct to affirm the finding at trial that Mr Shafron had contravened s 180(1) by failing to provide the advice in question. Mr Shafron's appeal was dismissed.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*